

OFFICE OF
APPELLATE COURTS

JUN 29 1994

FILED

ANNUAL REPORT OF THE
MINNESOTA CLIENT SECURITY BOARD

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June 1994

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OFFICE OF
APPELLATE COURTS

JUN 29 1994

June 27, 1994 **FILED**

Clerk of Appellate Courts
Suite 245
25 Constitution Avenue
St. Paul, MN 55155

Re: Client Security Board Annual Report

Dear Clerk:

Enclosed for filing are eight copies of the Annual Report of the Minnesota Client Security Board.

The Board approved the report at its June 13, 1994, meeting

Very truly yours,



Marcia A. Johnson
Director

:jd

cc: Honorable Sandra S. Gardebring (no enclosure)

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I. OVERVIEW AND YEAR IN REVIEW.

Rule 1.10, Minnesota Rules of the Client Security Board (MRCSB), provides:

At least once a year and at such other times as the Supreme Court may order, the Board shall file with the Court a written report reviewing in detail the administration of the fund, its operation, its assets and liabilities.

This seventh annual report of the Minnesota Client Security Board covers the Board's fiscal year, which began July 1, 1993, and will end on June 30, 1994.

This has been a year of substantial change for the Client Security Board. Following six years of leadership by Melvin Orenstein, the Board's original chair, Nancy Vollertsen was chosen as the Board's new chair at its first meeting of the year. Two new lawyer members, Kim Buechel Mesun and Earl Kyle IV, also joined the Board this year, replacing Mr. Orenstein and James Vessey, whose terms had expired.

The Board's rules and funding mechanism also underwent some revision this year. The Minnesota Supreme Court heard the Minnesota State Bar Association's petition for rule changes in November 1993 and ordered changes to the rules which took effect on December 15, 1993. The Board had submitted written comments on the MSBA petition and Ms. Vollertsen appeared before the Court at its hearing. As part of these changes, the Court formally raised the Board's "cap" (maximum payment per claim) from \$50,000 to \$100,000, and granted the Board discretion to award interest on paid claims. These changes will allow the Board to better meet its basic objective of making as full restitution to victims of lawyer theft as possible. Several claims are pending before the Board to which the new higher cap may apply. The Supreme Court also made permanent the Board's \$20 per year

assessment on Minnesota licensed attorneys until the Fund reaches a balance of \$1.5 million. A copy of the Court's order is at Appendix A.

In addition to considering the MSBA petition, the Board also continued its own study of the CSB rules which was reported in last year's Annual Report, with the goal of presenting a petition to the Court for several rule changes sometime in the next year. With Ms. Vollertsen's final term due to expire at the end of the next fiscal year, all of the Board's original members who participated in the drafting of the CSB Rules will have been replaced. To ensure that this experience is not lost, Ms. Vollertsen has made it a goal for the Board to complete this review during her term.

The Board will pay out approximately \$123,000 this year in claims, which represents the lowest figure in the Board's seven-year history. While the Board is generally pleased that the amount of paid claims was down this year, the Board remains at best cautiously optimistic. Several major claims are pending before the Board awaiting completion of lawyer disciplinary proceedings. With the Board's higher cap in place, resolution of these pending claims could produce a record high in amount of claims paid next year. The Board has therefore budgeted \$525,000 for next year for claim payment, the highest annual amount the Board has ever projected to date.

After its June 13, 1994, meeting, the Board will have met seven times during this fiscal year and resolved 43 claims. Twenty-four claims were approved for payment, in the amount of \$123,800.46. In the seven years of the Board's operation, the Board has now approved 159 claims and paid out \$1,696,514, against 47 different lawyers (*see* Appendix B). Seventeen claims were rejected this year as not qualifying for payment under the Board's rules (two claims were withdrawn after the attorney paid the claimant directly). In addition to the normal reasons for denying claims, such as that the claim was

basically one of negligence as opposed to dishonesty, several claims this year were unearned retainer claims against suspended or disbarred lawyers, but where the amount in question was fairly small and the lawyer had performed some services prior to being suspended or disbarred. In many such situations, the Board is unable to infer intentional dishonesty (as required by the Board's rules), despite the obvious sympathy which may exist towards the claimant whose case may have been left uncompleted.

At the start of the fiscal year, 25 claims were pending before the Board. Forty-five new claims were received during the year (as of June 14) with 43 claims being resolved. Thus, 27 claims remain pending, eight of which are more than seven months old. Despite the fact that several claims remain pending awaiting completion of related disciplinary, criminal or civil proceedings, seven months remains the average length of time within which the Board resolves almost all claims.

Again this year, the Board aggressively sought reimbursement through the Attorney General's Office from attorneys on whose behalf claims were paid. Martha Casserly, the Board's principal Assistant Attorney General, was able to add Janette Brimmer to her staff this year and thus has increased the ability to seek collection from attorneys. \$9,694 have been collected so far this year. Bearing in mind that collection is generally being sought from lawyers who have been disbarred and possibly criminally convicted, the Board's overall 4.5% return on paid claims places Minnesota as one of the leaders nationally in obtaining reimbursement from dishonest lawyers.

The Board's current assessment of \$20 per attorney will generate \$327,600 in income for the Board this year. In addition, \$44,000 in interest/investment income will be received. At the end of the current fiscal

year the Board expects to have approximately \$1,350,000 in the fund for use next year.

II. PROCEDURES OF THE CLIENT SECURITY BOARD.

The Board elected Rochester attorney Nancy Vollertsen as chair at the Board's first meeting of the year. Ms. Vollertsen replaced long-time Board chair Melvin Orenstein, whose term had expired. The Board's liaison on the Minnesota Supreme Court remains Justice Sandra Gardebring. The Office of Lawyers Professional Responsibility provides staff services to the Board for investigating claims and conducting Board meetings.

Board Members. The following individuals currently serve on the Board:

<u>Name</u>	<u>Term Expires</u>
Nancy B. Vollertsen, Rochester	June 30, 1995
Sister Mary Madonna Ashton, St. Paul	June 30, 1995
Bailey W. Blethen, Mankato	June 30, 1994
Sandra M. Brown, Minneapolis	June 30, 1996
Earle F. Kyle, IV, Minneapolis	June 30, 1996
Kim Buechel Mesun, St. Paul	June 30, 1996
Ronald B. Sieloff, St. Paul	June 30, 1994

Sister Mary Madonna Ashton and Ms. Brown are public members. All other members are Minnesota licensed attorneys. Mr. Blethen has recently been re-appointed to serve another three-year term. Mr. Sieloff is not eligible to be re-appointed to another term. Mr. Sieloff is one of the original members of the Board and has served on the Board for seven years. His interest and experience will be missed. The Supreme Court recently appointed Bloomington attorney Daniel Bowles to fill Mr. Sieloff's vacancy. Mr. Bowles was nominated through the MSBA.

Rules of the Minnesota Client Security Board. The rules took effect on July 1, 1987. As noted above, the first amendments to the rules were adopted this year. The Board also renewed the process of reviewing its rules for possible amendment during this past year. The Board has devoted a portion of its last three meetings to that subject and thoroughly reviewed several rules and Board policies. Some significant issues remain for consideration this year. Thus, the process of studying the rules for possible amendment will continue in the coming year. A petition incorporating the Board's proposals is expected this coming year.

Funding and Budget Procedures. The Supreme Court modified the \$20 per year assessment on all attorneys effective December 15, 1993. In the past, new lawyers paid \$100 during their first four years, then their obligation switched to \$20 annually. Now, in a simplified process, all practicing lawyers will pay \$20 per year from their first year of practice. The Court also instructed the Board to notify the Court when it projects a Fund balance of \$1.5 million, so the assessment can be reviewed.

This year the assessment will raise approximately \$327,000. At the end of this fiscal year, the Fund is projected to have a balance of approximately \$1,350,000. In FY'94 (ending June 30, 1994), the Fund also will receive approximately \$44,000 in investment income and \$10,000 in restitution this year. The Board does not handle any funds or the investment of the Fund. The assessment is collected through the Office of Attorney Registration and placed into a segregated fund within the state treasury.

The Board's budget is prepared and filed publicly in March each year, for approval by the Minnesota Supreme Court. The Board's FY'95 budget recently was approved by the Court. As always, the Board budgeted amounts to be paid in future for valid claims, many of which are not yet known, on the

assumption that lawyer theft will continue on average as in the past. Despite the unpredictability of future dishonesty, budgetary projections continue to be reasonably accurate. As previously noted, due to a large number of substantial claims pending at the beginning of the new fiscal year, the Board has budgeted \$525,000 for payment in FY'95.

Administrative Staff. The Office of Lawyers Professional Responsibility provides staff services to the Client Security Board. Marcia Johnson is the Board's Director. Assistant Director Martin Cole and legal assistant Patricia Jorgensen continue to handle the Board's day-to-day operation as they have done for several years. With an experienced staff in place, administrative expenses of only \$21,000 will be incurred by the Board this year. Payment of claims continues to account for over 80 percent of the Board's expenses.

The Minnesota Attorney General's Office provides legal services to the Client Security Board in enforcing the Board's subrogation rights against respondent attorneys or against third parties from whom payment may be obtained. Martha Casserly, Assistant Attorney General, remains the Board's chief attorney for all civil matters. She has added an assistant attorney, Janette Brimmer, who now handles much of the day-to-day collection work. The Board pays no attorney's fees for the Attorney General's representation, but is responsible for any costs of collection efforts or litigation. Several attorneys are making payments to the Board on their obligations. In addition, attorneys seeking reinstatement are required to reimburse the Client Security Fund for all claims paid on their behalf. This year it is expected that approximately \$7,000 will be recovered.

Claims Procedures. Claims are initiated by submitting the claim on forms approved by the Board to the Director's Office. Claimants are provided the necessary forms and a brochure to help explain the process. The

respondent attorney is given an opportunity to respond to the claim in writing. The rules also allow the Board access to lawyer disciplinary proceeding files, which often contain considerable information.

The rules provide that claimants are expected to pursue reasonably available civil remedies. In order to avoid hardship, the Board frequently exercises its discretion by waiving this requirement where the Attorney General will be pursuing litigation against an attorney under the Board's subrogation rights. In almost all cases, attorney disciplinary proceedings will have been completed before Client Security payment is made. The Board generally will rely on findings made in a related lawyer disciplinary action concerning misappropriation, or related civil or criminal matters where possible.

If a claim is denied, the claimant is notified in writing of the Board's determination and provided its reasoning. The claimant has the right to request reconsideration and a meeting with the full Board, so that the claimant will have full opportunity to present the merits of the claim before any denial is final.

The Board has developed some guidelines for consistently applying its rules to particular types of claims. If a claim fits into one of these categories, claimants are advised of the Board's general approach to their type of claim and offered the opportunity to present evidence to meet the Board's standards. At least one Board member or staff person also attends the ABA's annual client security forum to keep current on national trends and to ensure that the Board is analyzing claims consistent with other states' funds. Ms. Mesun recently attended the ABA's annual forum in Naples, Florida.

III. GOALS AND OBJECTIVES.

In FY'95, the Board will continue to pay all valid claims in full up to the new \$100,000 maximum. Because of a large number of potentially valid claims of a large amount, the Board has budgeted \$525,000 for claim payment next year. The current case load of the Board remains manageable. There are only seven claims that are more than seven months old.

The Board will continue its own rule review as discussed above. In addition, the Board has been advised that the MSBA is studying an insurance check notification rule which would require insurers to notify insureds directly when issuing a check to their attorney. It appears that the MSBA may recommend adoption of such a rule in Minnesota. The Board hopes to participate in that process.

The Client Security Fund and Board have seen changes this year in leadership and to the rules. That process of change likely will continue this year as new funding and higher payment limits will be implemented. The Board firmly believes, however, that there has been no change in its effectiveness or commitment to making restitution to victims of lawyer dishonesty.

Respectfully submitted,

Dated: June 17, 1994.

Nancy B. Vollertsen
NANCY B. VOLLERTSEN, CHAIR
MINNESOTA CLIENT SECURITY BOARD

Dated: June 27, 1994.

Marcia A. Johnson
MARCIA A. JOHNSON, DIRECTOR
MINNESOTA CLIENT SECURITY BOARD

Dated: June 16, 1994.

Martin A. Cole
MARTIN A. COLE
ASSISTANT DIRECTOR

STATE OF MINNESOTA

RECEIVED

IN SUPREME COURT

DEC 08 1993

C9-81-1206 & C0-85-2205

CLERK'S OFFICE

PROMULGATION OF AMENDMENTS TO
THE RULES OF THE SUPREME COURT
FOR REGISTRATION OF ATTORNEYS
AND RULES OF THE CLIENT SECURITY
BOARD

ORDER

WHEREAS, the Minnesota State Bar Association filed a petition with this Court that recommended amendments to Rule 2 of the Rules of the Supreme Court for Registration of Attorneys and Rule 3.14 (c) and (d) of the Rules of the Client Security Board, and

WHEREAS, the Supreme Court held a hearing on the proposed amendments on November 17, 1993, and

WHEREAS, the Supreme Court has reviewed the recommendations and is fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Rule 2 of the Rules of the Supreme Court for Registration of Attorneys is amended as follows: ~~Any attorney admitted to practice law on or after July 1, 1988, shall pay to the Minnesota Client Security Fund \$50 in the fiscal year of admission and an additional \$50 in the fiscal year the attorney becomes subject to the first paragraph of this rule. This second \$50 shall be instead of any annual assessment in favor of the Client Security Fund in that year.~~
2. The \$20.00 annual fee shall be collected for the Client Security Fund on a permanent basis.
3. The Client Security Board shall report to the Supreme Court when the Client Security Fund reaches \$1,500,000 in value.

IT IS FURTHER ORDERED:

1. Rule 3.14 is amended to add new subdivisions (c) and (d) as follows:

RULE 3.14 DETERMINATION

* * *

c. The maximum amount that may be paid to any claimant for a single claim is \$100,000. In exceptional circumstances, the Board may allow a greater or lesser amount based on the factors set forth in subdivision (b) of this rule.

d. The Board may, in its discretion, award interest on any award at the rate of interest payable under Minnesota § 549.04 from the date of filing the claim. In determining the amount of interest, if any, the Board may consider:

- (1) The length of time between filing the claim and its disposition;
- (2) The existence of third-party litigation; and
- (3) Other factors outside the control of the Board.

2. The amendments to Rule 3.14 are retroactively effective for all claims filed on or after February 1, 1993.

DATED: December 3, 1993

BY THE COURT:

OFFICE OF
APPELLATE COURTS

DEC 3 1993

FILED



A.M. Keith
Chief Justice

CLAIMS AND AMOUNTS PER ATTORNEY
as of June 14, 1994

ATTORNEY	PENDING/AMOUNT		PAID/AMOUNT		DENIED	W/DRAWN	Crim. Pros.
H.W.A.			2	\$39,258.97			NO
T.P.A.	1	\$22,000.00			1		
J.M.A.			2	100,000.00			NO
L.M.B.			2	3,947.93			YES
T.C.B.					1		YES
R.K.B.			1	50,000.00			YES
J.W.B.					1		
J.T.B.			1	50,000.00			YES
A.J.B.					2		YES
R.J.B.	1	3,368.00					
J.B.					1		
C.C.					1		
E.M.C.					1		
M.R.C.					10		YES
A.A.D.			3	81,375.00			YES
D.D.	3	78,848.69					
J.A.D.						1	
B.C.D.			11	226,119.60	1		DIED
J.J.D.						1	NO
B.E.					1		
R.E.					2		
B.E.E.			2	1,995.00	2		
J.H.F.			2	12,954.00	1		NO
J.J.F.			6	113,626.59	6		YES
P.F.					1		
R.M.F.			6	4,062.50	3	1	NO

CLAIMS AND AMOUNTS PER ATTORNEY
as of June 14, 1994

ATTORNEY	PENDING/AMOUNT		PAID/AMOUNT		DENIED	W/DRAWN	Crim. Pros.
S.F.					1		
N.F.					1		
T.G.					1		
P.D.G.	3	11,030.00					
C.C.G.					1		
T.G.	1	7044.50	2	1,257.98			YES
F.H.	1	2,227.74					
S.H.					1		
T.R.H.					2		
M.H.					1		
S.G.H.			2	12,800.00	4		NO
H.F.H.	1	3,985.60	1	14,500.00			NO
D.E.H.			1	1,000.00			NO
V.H.					1		
G.H.					6		
J.W.H.			5	21,900.00	2		YES
C.F.I.			1	535.78			NO
D.E.J.					1		
L.L.J.					1		
A.J.					1		
R.J. and J.S.					1		
J.E.K.					1		
S.J.K.			1	500.00			
A.W.L.			2	18,400.00	1		NO
W.L.L.			13	49,542.60	5		NO
D.D.L.			1	40,000.00			YES

CLAIMS AND AMOUNTS PER ATTORNEY
as of June 14, 1994

ATTORNEY	PENDING/AMOUNT		PAID/AMOUNT		DENIED	W/DRAWN	Crim. Pros.
E.C.L.			1	368.00			NO
M.R.L.					1		
D.S.L.			3	560.00			NO
P.S.M.						1	
P.M.					1		
G.L.M.			7	24,170.00	3		NO
F.P.M.			1	1,128.00			NO
R.M.M.					5		
D.E.M.					1		
D.J.M.	7	1,149,197.75					
W.G.M.			3	425.00	6		NO
G.W.M.			9	4,980.99	2	1	NO
N.L.F.					1		
D.A.O.	1	20,000.00					
L.E.O.			1	50,000.00			NO
B.J.O.			3	15,297.72			YES
K.J.O.					1		NO
G.Y.P.	1	6,757.38	2	3,323.00			
K.R.P.			2	39,000.00	1		NO
W.G.P.						1	
W.A.P.					1		
D.R.P.					2		
R.P.					1		
R.C.P.					2		
G.E.P.			4	81,144.77			YES
W.P.					1		

CLAIMS AND AMOUNTS PER ATTORNEY
as of June 14, 1994

ATTORNEY	PENDING/AMOUNT		PAID/AMOUNT		DENIED	W/DRAWN	Crim. Pros.
T.M.P.			3	17,082.02	2		NO
T.P.					1		
J.P.					1		
D.G.P.			1	16,450.00			NO
D.R.					1		
D.R.					1		
M.N.R.			3	7,500.00	2		NO
P.R.					1		
M.A.S.			20	404,681.02	11		YES
D.S.	1	40,000.00					
W.S.					1		
W.S.					1		
J.S.			2	57,821.34			DIED
A.S.					1		
I.S.					1		
W.S.			5	50,391.66			YES
P.S.			1	2,360.23			NO
J.S.			5	2,349.26	1		NO
J.S.			1	557.87			NO
M.S.		see R.K.B					
W.S.			1	25,000.00		1	
H.S.						1	
R.S.					1		
D.R.S.			1	1,197.00			NO
M.S.					1		NO
K.P.S.			1	200.00			DIED

CLAIMS AND AMOUNTS PER ATTORNEY
as of June 14, 1994

ATTORNEY	PENDING/AMOUNT		PAID/AMOUNT		DENIED	W/DRAWN	Crim. Pros.
M.T.					1		
D.T.					1		
B.A.S.	5	4,225.00	5	20,645.40	2		
J.R.T.			2	6,160.00			NO
N.W.T.					2		
R.V.	1	6,137.23					
S.W.			5	19,945.00	2		NO
D.W.					1		
J.M.W.					1		
M.S.W.					1		
B.P.W.		see D.J.M					
TOTAL	27	\$1,354,821.89	159	\$1,696,514.23	134	8	

Reported Client Losses
July 1, 1987 through June 14, 1994

Table 1. This table summarizes, by area of law, all claims for reimbursement filed since July 1, 1987 (including claims carried on from MSBA Client Security Fund.)

Area of Law	# of Claims	% of Claims	Amount of Loss Alleged	% of Alleged Losses
Bankruptcy	22	7	\$654,806.60	4
Business	17	6	\$2,312,180.55	14
Criminal	16	5	\$207,696.12	1
Family	52	16	\$1,285,572.56	8
Investment	33	10	\$2,194,289.86	13
Litigation	54	16	\$4,243,176.62	25
Personal Injury	11	3	\$481,177.20	3
Probate	40	12	\$2,892,094.49	17
Real Estate	28	8	\$152,118.86	9
Settlement	15	4	\$158,212.42	1
Tax	8	3	\$97,212.71	1
Worker's Comp	1	1	\$750.00	0
Other	27	8	\$872,167.06	5
	323	100	\$16,927,455.05	100

Reported Client Losses
July 1, 1993 through June 14, 1994

Table 2. This table summarizes, by area of law, all claims for reimbursement filed during fiscal year 1994.

Area of Law	# of Claims	% of Claims	Amount of Loss Alleged	% of Alleged Losses
Bankruptcy	1	2	\$420.00	0
Business	4	9	\$50,384.98	6
Family	3	8	\$71,201.27	8
Investment	5	11	\$534,000.00	58
Litigation	10	22	\$17,912.00	2
Probate	10	22	\$77,177.79	8
Real Estate	6	13	\$37,652.15	4
Settlement	1	2	\$575.00	0
Other	5	11	\$130,348.69	14
	45	100	\$919,671.88	100

Awards of Reimbursement

July 1, 1987 through June 14, 1994

Table 3. This table summarizes, by area of law, all awards of reimbursement approved by the Board since 1987.

Area of Law	# Of Awards	% of all Awards	Amount of All Awards	Alleged Loss Involved	% of All Losses	% of Alleged Loss Reimbursed
Bankruptcy	15	10	\$40,183.30	\$48,859.30	2	82
Business	4	0	\$54,934.00	\$231,176.74	8	24
Criminal	7	5	\$82,649.69	\$93,609.47	3	88
Family	29	19	\$156,225.89	\$241,051.14	8	65
Investment	2	0	\$100,000.00	\$222,569.01	7	45
Litigation	18	12	\$240,476.60	\$301,287.52	10	80
Personal Injury	8	5	\$125,573.30	\$270,763.00	9	46
Probate	27	18	\$518,124.63	\$1,065,752.00	35	49
Real Estate	13	9	\$189,432.36	\$198,732.55	7	95
Settlement	15	10	\$65,592.74	\$116,160.40	4	57
Tax	7	5	\$38,112.28	\$96,452.71	3	40
Worker's Comp	1	0	\$750.00	\$750.00	0	100
Other	11	7	\$84,459.44	\$120,558.66	4	70
	159	100	\$1,696,514.23	\$3,007,722.50	100	

Awards of Reimbursement

July 1, 1993, through June 14, 1994

Table 4. This table summarizes, by area of law, all claims for reimbursement approved by the Board during fiscal year 1994.

Area of Law	# Of Awards	% of all Awards	Amount of All Awards	Alleged Loss Involved	% of All Losses	% of Alleged Loss Reimbursed
Business	1	4	\$3,300.00	\$7,050.00	3	47
Bankruptcy	1	4	\$275.00	\$275.00	0	100
Family	1	4	\$6,809.75	\$58,801.27	31	12
Litigation	3	13	\$12,120.00	\$16,400.00	9	75
Probate	5	21	\$62,079.07	\$62,837.07	34	99
Real Estate	2	8	\$8,535.65	\$8,535.65	5	100
Settlement	8	33	\$4,735.99	\$4,963.50	3	96
Other	3	13	\$25,745.00	\$28,900.00	15	89
	24	100	\$123,600.46	\$187,762.49	100	